



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- The QSEHRA notice must usually be provided at least 90 days before the start of the plan year.
- For 2017, the earliest QSEHRA notice deadline was March 13, 2017.
- The IRS has delayed the QSEHRA notice deadline for 2017 plan years until further guidance is issued.

## NEW DEADLINE

- Future IRS guidance will specify a new deadline for providing the initial employee notice for QSEHRAs adopted for 2017.
- The new deadline will be at least 90 days after the date that the guidance is issued.

## IRS Extends Deadline for Providing QSEHRA Notice

### OVERVIEW

On Feb. 27, 2017, the Internal Revenue Service (IRS) issued [Notice 2017-20](#) to extend the deadline for small employers to provide the initial employee notice for a qualified small employer health reimbursement arrangement (QSEHRA). QSEHRAs are a new benefit option for eligible small employers, effective for plan years beginning on or after Jan. 1, 2017.

Employers that adopt QSEHRAs are usually required to provide a written notice to eligible employees at least 90 days before the beginning of the plan year. As transition relief, small employers had until March 13, 2017, to provide the initial QSEHRA notice. The IRS plans to issue guidance in the near future regarding the content requirements for the QSEHRA notice. Until then, employers are not required to provide the initial QSEHRA notice.

### ACTION STEPS

Small employers that adopt QSEHRAs for 2017 have additional time to provide the initial QSEHRA notice. Rather than providing the notice by March 13, 2017, small employers can wait to provide the notice until after the IRS issues its guidance on the notice's content requirements. In the meantime, employers that provide the initial QSEHRA notice may rely upon a reasonable good faith interpretation of the law's content requirements for the notice.

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## QSEHRAs

The [21st Century Cures Act](#) (Cures Act) allows eligible small employers to offer a new type of health reimbursement arrangement (HRA)—the QSEHRA—for plan years beginning on or after Jan. 1, 2017. A QSEHRA is an employer-funded arrangement that can be used to reimburse eligible employees' out-of-pocket expenses for medical care, including premiums for individual health insurance policies.

To be eligible to offer a QSEHRA, an employer cannot be an applicable large employer that is subject to the ACA's employer shared responsibility rules and cannot maintain a group health plan for any of its employees. Because a QSEHRA is not considered a "group health plan" for most purposes, it is not subject to the Affordable Care Act's market reforms that have limited the availability of stand-alone HRAs. However, QSEHRAs are subject to some strict design requirements, including a nondiscrimination rule and a maximum benefit limit. QSEHRAs are also subject to an employee notice requirement.

## Employee Notice

An employer funding a QSEHRA for any year must provide a written notice to each eligible employee. This notice must be provided **at least 90 days before the beginning of the year**. For employees who become eligible to participate in the QSEHRA during the year, the notice must be provided by the date on which the employee becomes eligible to participate. As transition relief, the Cures Act provides that small employers will not be treated as violating the notice's timing requirements if the notice is provided no later than 90 days after the Act's enactment, or March 13, 2017.

In Notice 2017-20, the IRS states that it plans on issuing guidance in the near future on the QSEHRA notice. To provide employers with additional time to comply with the notice requirement, an eligible small employer that provides a QSEHRA for a year beginning in 2017 is not required to provide the initial QSEHRA notice until after the IRS issues this guidance. The new deadline for providing the initial QSEHRA notice will be no earlier than 90 days following the issuance of this guidance.

In the meantime, employers that provide the QSEHRA notice to their eligible employees may rely upon a reasonable good faith interpretation of the Cures Act to determine the contents of the notice. The Cures Act provides that the QSEHRA notice must include the following information:

- ✓ The employee's maximum benefit under the QSEHRA for the year;
- ✓ A statement that, if the employee is applying for advance payment of the premium assistance tax credit, the employee should provide the Exchange with information about the QSEHRA's maximum benefit; and
- ✓ A statement that, if the employee is not covered under minimum essential coverage for any month, the employee may be subject to a penalty under the ACA's individual mandate and reimbursements under the QSEHRA may be included in gross income.

*To provide employers with more time, the deadline for providing an initial QSEHRA notice to eligible employees has been extended until after the IRS provides more guidance on the notice requirement.*

**Possible Penalties:** If an employer fails to provide the QSEHRA notice for a reason other than reasonable cause, the employer may be subject to a penalty of \$50 per employee for each failure, up to a maximum annual penalty of \$2,500 for all notice failures during the year.